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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

INDIANA LUMBERMENS MUTUAL
INSURANCE COMPANY,

Defendant and Appellant.

E047855

(Super.Ct.No. RIF138419)

OPINION

APPEAL from the Superior Court of Riverside County. Janice M. McIntyre,
Judge. (Retired judge of the Riverside Super. Ct., assigned by the Chief Justice
pursuant to art. VI, § 6, of the Cal. Const.) Affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

Pamela J. Walls, County Counsel, and Patricia Munroe, Deputy County Counsel,
for Plaintiff and Respondent.

The trial court denied Indiana Lumbermens Mutual Insurance Company's¹ (Indiana Insurance) motions to set aside summary judgment on a bail bond forfeiture, discharge the forfeiture, and exonerate the bail bond. Indiana Insurance contends that the trial court erred by denying the motions because Juan Bacilio, the defendant who was the subject of the bail bond forfeiture (defendant), was detained by U.S. Immigration and Customs Enforcement (ICE) and deported, which prevented Indiana Insurance from surrendering defendant. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Defendant was charged with committing assault with a deadly weapon or with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))² and with inflicting great bodily injury (§ 12022.7, subd. (a)). The trial court granted defendant bail in the sum of \$50,000. On August 7 or 8, 2007, Indiana Insurance posted defendant's bail, and undertook the responsibility of defendant appearing in the Riverside County Superior Court on August 15, 2007. If defendant failed to appear as promised, then Indiana Insurance would pay the State of California \$50,000.

On August 15, 2007, defendant did not appear in court. The minute order from that day read, "Defendant No Longer in custody for the reason: Bail Posted with INS

¹ At some points in the clerk's transcript appellant's name is spelled "Lumberman's"; however, on the bail bond contract, and in a variety of other places within the record, appellant's name is spelled "Lumbermens." Because the contract, judgment, and notice of appeal, use the "Lumbermens" spelling, we will use that spelling within this opinion.

² All further statutory references will be to the Penal Code, unless otherwise indicated.

hold.” The trial court ordered that defendant’s bail bond be forfeited, and issued a bench warrant for defendant. That same day, the trial court sent Indiana Insurance a notice that the bail bond was forfeited. The notice further provided that Indiana Insurance was “entitled to a hearing as to the setting aside of the forfeiture within 185 days of the date of this notice.”³

On January 31, 2008, The Bail Hotline Bail Bonds (Bail Hotline) moved the trial court to extend the 185-day time period for seeking relief from the forfeiture.⁴ Indiana Insurance explained that it needed more time before it could move the court to vacate the forfeiture order because defendant was deported to Mexico, and Indiana Insurance was waiting on documents from the Department of Homeland Security, which were necessary to support the motion to vacate the forfeiture. The trial court granted the motion, and gave Indiana Insurance an additional 180 days, i.e., until August 13, 2008.

On September 15, 2008, the trial court entered summary judgment on the bail bond forfeiture, ordering Indiana Insurance to pay the state of California \$50,000, plus

³ The 185-day period is comprised of a 180-day statutory time period for filing the motion to vacate the forfeiture order, plus five days for mailing. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 658 (*American Contractors*).)

⁴ The motion was filed by “The Bail Hotline Bail Bonds c/o Fugitive Recovery Int’l.” Indiana Insurance’s bond in the instant case has two headings on it. The first heading reads, “Indiana Lumbermens Mutual Insurance Company,” with an address in Indiana. The second heading reads, “The Bail Hotline Bail Bonds,” with an address in San Bernardino, California. We infer that Indiana Insurance is the surety, and The Bail Hotline Bail Bonds is the bail agent; sureties act through their bail agents. (See *People v. Ranger Ins. Co.* (2003) 110 Cal.App.4th 729, 733-734 [explaining bail bonds terminology].) The surety or the bail agent may move the court to extend the time for filing the motion to vacate the forfeiture order. (§ 1305, subd. (i).)

costs and interest. Notice of the judgment was mailed to Indiana Insurance that same day.

On November 4, 2008, Indiana Insurance moved the trial court to set aside the summary judgment, discharge the forfeiture, and exonerate the bail bond. That same day, Indiana Insurance filed a request for judicial notice that included a document with a variety of dates on it that reads, “I.C.E. records indicate that [defendant] is not legally in the United States and appears to be subject to removal proceedings. [Defendant] was apprehended and voluntarily returned to Mexico.” In January 2009, Indiana Insurance filed the declaration of an attorney who declared that he contacted the immigration court and was informed that defendant was granted voluntary departure by the immigration court on September 10, 2007. In November 2008, Indiana Insurance submitted the declaration of a bail agent who contacted ICE. The bail agent was informed that “defendant was deported back to Guatemala.” In Indiana Insurance’s motions, it argued that it could not have surrendered defendant in state court without violating federal immigration laws.

The People opposed Indiana Insurance’s motions, asserting that the motions were untimely because they were not brought within the statutory timeframe for setting aside a bail forfeiture, i.e., before August 13, 2008. Further, the People argued that there was a difference between being deported to Mexico and being voluntarily returned to Mexico. The People asserted that because defendant voluntarily returned to Mexico, his failure to appear was more akin to choosing to leave the jurisdiction.

The trial court denied Indiana Insurance's motions. The record does not reflect the reason(s) for the trial court's ruling.

DISCUSSION

A. CONTENTIONS

Indiana Insurance contends that the trial court erred by denying its motions to set aside the summary judgment, discharge the forfeiture, and exonerate the bail bond because it could not have produced defendant in state court without violating federal immigration laws. The People contend that the trial court properly denied Indiana Insurance's motions because the motions were untimely. We disagree with Indiana Insurance's contention, and agree with the People's contention.

B. LEGAL BACKGROUND

Typically, a surety must move to exonerate a bail bond within 185 days of the trial court mailing the notice that bail was forfeited. (§ 1305, subds. (b) & (i); *People v. Ranger Ins. Co.* (2006) 141 Cal.App.4th 867, 869.) However, if the surety files a motion requesting more time, and shows good cause for needing more time, then the trial court may extend the exoneration period up to an additional 180 days. (§ 1305.4.) If the 185- or extended 365-day exoneration period expires without the forfeiture order having been vacated, then the trial court must enter summary judgment against the surety—the trial court has 90 days within which to enter the summary judgment. (§ 1306, subds. (a) & (c); *American Contractors, supra*, 33 Cal.4th at p. 658.)

The foregoing paragraph describes the typical procedure for seeking relief from a bail bond forfeiture; however, the statutory scheme related to bail bonds includes

several statutorily enumerated circumstances which have been interpreted to permit a trial court to vacate a forfeiture order where the surety has not filed its motion to vacate within the 185- or 365-day period. (See e.g., *People v. Ranger Ins. Co.*, *supra*, 141 Cal.App.4th at p. 871.) The particular exceptional circumstances that are relevant to this discussion will be presented *post*.

When seeking to vacate a forfeiture order and exonerate a bond, the burden is on the surety that is to establish by competent evidence that its case falls within the four corners of the various statutory requirements. (*People v. American Surety Ins. Co.* (1999) 75 Cal.App.4th 719, 725.) Nevertheless, we are mindful that the law disfavors forfeitures and the statutes that impose them; therefore, we strictly construe the forfeiture statutes in favor of Indiana Insurance, in order to avoid harsh results. (*People v. American Contractors Indem.* (1999) 74 Cal.App.4th 1037, 1045.)

C. STANDARD OF REVIEW

““The determination of a motion to set aside an order of forfeiture is entirely within the discretion of the trial court,”” and will not be disturbed on appeal absent an abuse of that discretion. (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 944.) However, the trial court’s legal conclusions are not binding on appeal when the evidence is undisputed and the issue presented raises a question of law. (*People v. American Bankers Ins. Co.* (1992) 4 Cal.App.4th 348, 350.) The evidence before us is undisputed; therefore, the trial court’s legal conclusions are not binding in this case. When we interpret a statute, if the plain language of the statute is clear and unambiguous, then we presume that the Legislature meant what it wrote, the plain

meaning of the statute governs, and we do not embark on judicial construction of the statute. (*People v. Accredited Sur. & Cas. Co., Inc.* (2004) 125 Cal.App.4th 1, 7.)

D. TIMELINESS OF INDIANA INSURANCE'S MOTIONS

We begin by addressing the People's contention that Indiana Insurance's motions are untimely.

Section 1305, subdivision (i), provides: "A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The [trial] court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court, in its discretion, may require that the moving party provide 10 days prior notice to the applicable prosecuting agency, as a condition precedent to granting the motion."

Section 1305, subdivision (i), refers to "motions" generally; therefore, the statute "strongly suggests that the Legislature intended that all motions to vacate the forfeiture and exonerate a bond under section 1305 be filed within the statutory period." (*People v. Lexington Nat. Ins. Co.* (2007) 158 Cal.App.4th 370, 375, fn. omitted.)

Indiana Insurance's 185-day time period combined with the 180-day extension for filing a motion to vacate the forfeiture expired on August 13, 2008. The trial court entered summary judgment on September 15, 2008. Indiana Insurance filed its motions to set aside the summary judgment, discharge the forfeiture, and exonerate the bail bond

on November 4, 2008. Accordingly, Indiana Insurance's motions were untimely because they were not filed prior to August 13, 2008.

E. INDIANA INSURANCE'S CONTENTIONS

Indiana Insurance asserts two arguments in support of its position that its motions were timely.

1. *TIMELINESS OF A POSTJUDGMENT MOTION*

First, Indiana Insurance contends that it could not have moved to set aside the summary judgment until after the summary judgment was entered, and therefore, it could not have filed its motion before the 365-day period expired. Indiana Insurance is incorrect that it is permitted to move to set aside the summary judgment.

In *People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193, 1199 (*Billingslea*), the reviewing court interpreted section 1305.4. Section 1305.4 is the statute that permits a trial court to grant a 180-day extension for a bail surety to move for an order vacating the forfeiture of its bond. The reviewing court in *Billingslea* interpreted section 1305.4 as permitting only one extension of the statutory 180-day time period. The reviewing court reasoned that to hold otherwise "would violate the policy and spirit of the statutory framework within which section 1305.4 is found which strongly favors limiting the amount of time a surety has to challenge [the] forfeiture." (*Billingslea*, at p. 1199.)

In other words, permitting a bail surety to set aside a summary judgment on a bail forfeiture would circumvent the Legislature's intent in enacting strict and specific time limits governing bond forfeiture proceedings. (See *People v. Stuyvesant Ins. Co.*

(1963) 216 Cal.App.2d 380, 382-383 [reaching a similar conclusion].) Consequently, we are not persuaded by Indiana Insurance’s argument that it properly filed its motions after summary judgment was entered, because the statutory scheme does not permit the type of postjudgment motions filed by Indiana Insurance.

2. *MOTION CONCERNING JURISDICTION*

Second, Indiana Insurance argues that it could bring the postjudgment motions because its motions were not based upon the strict and specific bail bond forfeiture proceedings set forth in section 1305; rather, Indiana Insurance argues that its motion was outside the statutory scheme related to bail bond forfeitures, because, in its motion to set aside the judgment Indiana Insurance argued that the trial court lacked jurisdiction to enter the summary judgment, and therefore the section 1305, 180-day statutory time limit was inapplicable to its motion to set aside the judgment.

In Indiana Insurance’s postjudgment motions, it argued that it could not produce defendant in state court because defendant was returned to Mexico by federal authorities. Indiana Insurance argued that defendant’s removal “by the federal government and his legal ineligibility to return to the United States are permanent disabilities” that made it impossible for Indiana Insurance to surrender defendant. The final line of Indiana Insurance’s motions reads, “‘Where a statute such as section 1305, subdivision (b), requires a court to exercise its jurisdiction in a particular manner, to follow a particular procedure, *or to perform subject to certain limitations*, an act beyond those limits is in excess of its jurisdiction.’ [Citations.]”

Our review of Indiana Insurance's motions reveals that the motions were based upon section 1305, subdivision (d)(1), which provides that a trial court, on its own motion, must vacate the forfeiture order and exonerate the bail bond if within 180 days of the forfeiture it is satisfactorily proven that defendant is "permanently unable to appear in the court due to . . . detention by military or civil authorities." A citation to section 1305, subdivision (d)(1), is not included in Indiana Insurance's motions; however, we infer that this code section is the basis of Indiana Insurance's motions because key words from the statute such as "permanent disabilities" are used in Indiana Insurance's motions.

Based upon Indiana Insurance's argument and our review of the legal authorities, we infer that Indiana Insurance was attempting to assert the following argument: The trial court acted in excess of its jurisdiction by entering summary judgment against Indiana Insurance because the trial court, on its own motion, should have vacated the forfeiture order and exonerated the bail bond when Indiana Insurance submitted proof that defendant was removed to Mexico by federal authorities; and therefore, the trial court's forfeiture order is voidable.

In sum, it does not appear from our review of the record that Indiana Insurance's motions were outside the statutory scheme related to bail bonds. Rather, Indiana Insurance's motions appear to be seeking relief pursuant to section 1305 subdivision (d)(1). Therefore, Indiana Insurance needed to comply with the timelines imposed by section 1305.

3. *MERITS OF THE MOTIONS*

We examine the merits of Indiana Insurance's motions, because we are mindful that the law disfavors forfeitures and we want to ensure that Indiana Insurance is not suffering harsh results due solely to its untimely filing.

As noted *ante*, Indiana Insurance appears to have advanced the argument that the trial court's forfeiture order is voidable, because the trial court was required to vacate the forfeiture order and exonerate the bond on its own motion. Accordingly, we analyze section 1305, subdivisions (d) and (f), which are subdivisions that direct a trial court to vacate a forfeiture order on its own motion, and which are the two exceptions to the general 180-day motion rule that are most applicable to the instant case.

a) Section 1305, Subdivision (d)

Section 1305, subdivision (d) provides: "In the case of a permanent disability, the court shall direct the order of forfeiture to be vacated and the bail . . . exonerated if, within 180 days of the date of forfeiture or within 180 days of the date of mailing of the notice if notice is required . . . , it is made apparent to the satisfaction of the court that both of the following conditions are met: [¶] (1) The defendant is . . . permanently unable to appear in the court due to . . . detention by military or civil authorities. [¶] (2) The absence of the defendant is without the connivance of the bail."

On January 22, 2009, Indiana Insurance filed the declaration of the attorney who was informed that defendant was granted voluntary leave to Mexico. On November 13, 2008, Indiana Insurance filed the declaration of the bail agent who was informed that defendant was deported to Guatemala. A request for judicial notice, dated November 4,

2008, includes an undated document that reflects defendant “was apprehended and voluntarily returned to Mexico.” In sum, none of the evidence was submitted before August 13, 2008. Therefore, Indiana Insurance did not make it apparent to the court, within 180 days of the date of mailing of notice of the forfeiture that defendant was detained.

Nevertheless, to the extent that it is proper to submit the evidence as part of the postjudgment motion, the evidence submitted by Indiana Insurance does not reflect that defendant was detained in Mexico or Guatemala. Accordingly, Indiana Insurance has not shown that the trial court was obligated to vacate the forfeiture order and exonerate the bail pursuant to section 1305, subdivision (d).

b) Section 1305, Subdivision (f)

Section 1305, subdivision (f), provides: “In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.”

Indiana Insurance did not submit evidence that defendant was in custody in Mexico or Guatemala. Indiana Insurance did not submit evidence that the district attorney elected not to extradite defendant. Additionally, Indiana Insurance did not submit evidence that it had filed a petition to have defendant legally returned to the United States for trial pursuant to 8 United States Code, section 1182(d)(5)(A), which

provides for the reentry of removed aliens for court appearances. Due to the lack of evidence, the trial court did not err by rejecting Indiana Insurance's claim that defendant's removal from the country, standing alone, excused Indiana Insurance's failure to surrender defendant. (See *People v. Argonaut Ins. Co.* (1976) 64 Cal.App.3d 665, 667 [absent any attempt to stay deportation or arrange temporary return for court appearance, surety could not claim deportation order alone made it impossible to comply with bail bond conditions].)

c) Conclusion

In sum, Indiana Insurance has not shown that the trial court was required, on its own motion, to vacate the forfeiture order and exonerate the bail bond. Accordingly, we are not persuaded that the trial court erred by denying Indiana Insurance's postjudgment motions, because there was no basis upon which to conclude that the trial court acted in excess of its jurisdiction by entering the summary judgment.

DISPOSITION

The judgment is affirmed. The People are awarded costs on appeal. (§ 1305.3.)

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/s/ MILLER
J.

We concur:

/s/ RAMIREZ
P. J.

/s/ RICHLI
J.